war against another state, it implies that the whole nation declares war and that all the subjects or citizens of one are the enemies of those of the other." See also *U. S.* v. *Active,* 24 Fed. Cas. 755. Usage and custom prescribing restraints imposed for the protection of non-combatants and third persons generally is merely "a guide which the sovereign follows or abandons at his will. The rule * * * is addressed to the judgment of the sovereign, and although it cannot be disregarded by him without obloquy, yet it may be disregarded." Opinion by Chief Justice Marshall in *Brown* v. *U. S.,* 8 Cranch. 110. It appears then from these authorities that, *as far as the courts are concerned,* every authorized act of hostility against the enemy is lawful. War is governed by no restraints or limitations which any nation is bound to respect in its dealings with the other. This view, in accordance with that of the principal case, is maintained by the weight of authority.

NEW TRIALS—WHERE JUDGE MISDIRECTS HIMSELF ON A POINT OF LAW.—Two defendants were sued for a trespass, and the judge of the county court, sitting without a jury, apportioned the damages between them and rendered a several judgment against each for the assigned portion. Being convinced that this was error in law, the judge granted a new trial. *Held* that while he could grant a new trial for error committed in point of fact, he had no authority to do so for error in point of law. *Aster* v. *Barrett & Hulme* [1920], 3 K. B. 13.

The effect of the above decision is to make it impossible for the trial court to correct such an error, and to force the aggrieved party to an appeal. The American practice is generally *contra. Hawxhurst* v. *Rathgeb* (1898), 119 Cal. 532; *Wilson* v. *City National Bank* (1877), 51 Neb. 87. But it is said that when the error is purely one of law the effect of the award of a new trial is not a re-trial of the case but only a correction of the error by the court. *Lumbermen's Ins. Co.* v. *City of St. Paul* (1901), 82 Minn. 497; *Merrill* v. *Miller* (1903), 28 Mont. 134. In Indiana the practice is in accordance with the rule stated in the principal case. *Holmes* v. *Phoenix Mut. Life Ins. Co.* (1874), 49 Ind. 356; *Maynard* v. *Waidlich* (1901), 156 Ind. 562.

PATENTS—UTILITY OF INVENTION.—Plaintiff sued to recover damages for infringement of a patent. It was shown on the trial that the apparatus as described in the patent would not work successfully, although it could be made to do so by some mechanical changes. *Held,* the patent was invalid because of the inutility of the device. *Beidler* v. *United States* (1920), 40 Sup. Ct. 564.

It was quite unnecessary for the court to pass on the validity of the patent. If the defendant was using essentially the same device as that covered by the patent, then obviously the patented device was usable. "The patent was itself evidence of the utility of Claim 4, and the defendant was estopped from denying that it was of value." *Westinghouse Co.* v. *Wagner Mfg. Co.,* 225 U. S. 604, 616. If the defendant was using an essentially different device, equally obviously he was not infringing the plaintiff's patent